

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2018-XXXX

IN THE MATTER OF

RENE LARRANAGA
MODOC COUNTY

This Order is issued pursuant to California Water Code¹ section 13323 to Rene Larranaga (Discharger) for failing to submit a Report of Waste Discharge (RoWD) required under Water Code section 13260.

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds the following:

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or have the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in California Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (Wat. Code, § 13050(e).) The Central Valley Water Board is required to regulate discharges to waters of the state. (Wat. Code, § 13263.)
2. Attachment E of Central Valley Water Board Order R5-2013-0100, Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-Party Group (Individual General Order), and Attachment E of Central Valley Water Board Order R5-2014-0030-R1, Waste Discharge Requirements General Order for Growers within the Sacramento River Watershed Area that are Members of the Third-Party Group (General Order), define "irrigated lands" as "Land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Modoc County, including the Discharger, that were likely discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program [FMMP] land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued requiring landowners to obtain regulatory coverage for lands irrigated for a commercial purpose.

¹ All references are to the California Water Code unless otherwise noted.

5. Evaluation of county assessor and FMMP data indicates that the Discharger owns approximately 60 acres of land irrigated for a commercial purpose in Modoc County, identified as Assessor's Parcel Number (APN) 022-510-036.
6. On 11 August 2014 and 9 September 2014, the Central Valley Water Board issued notices to the Discharger describing new water quality regulations and options available to comply with the regulations.
7. On 28 July 2015, Board staff reviewed aerial photography of Modoc County APN 022-510-036 and found evidence of commercial irrigated lands, with a likely crop type of hay.
8. On 30 December 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive letter (Directive) to the Discharger, sent via certified mail. The Directive was sent based on evidence that the subject parcel contained commercially irrigated land without regulatory coverage.
9. The Directive required the Discharger to obtain regulatory coverage for all commercial irrigated lands that he owns or operates within 15 calendar days of receipt of the Directive. As detailed in the Directive, the Discharger could obtain regulatory coverage by enrolling in the General Order or Individual General Order. To enroll in the General Order, the Discharger was required to enroll in the Sacramento Valley Water Quality Coalition (Coalition or SVWQC) and submit a completed Notice of Intent (NOI) with a \$200 administrative processing fee to the Central Valley Water Board. To enroll in the Individual General Order, the Discharger was required to submit a completed NOI with the first year's annual fee to the Central Valley Water Board.
10. The Directive was delivered to the Discharger on 6 January 2016. The Discharger neither obtained regulatory coverage by 21 January 2016 nor contacted the Board.
11. Because the Discharger failed to respond to the Directive, a Notice of Violation (NOV) was sent to the Discharger via certified mail on 3 May 2016. The Discharger's representative received the NOV on 20 May 2016.
12. On 15 December 2016, Board staff attempted a "last chance" phone call to the Discharger. The recording on the answering machine confirmed that the number used by Board staff belonged to the Discharger. Board staff left a message for the Discharger, notifying him that Board staff would pursue enforcement if the Discharger did not obtain regulatory coverage for his irrigated lands. Board staff provided contact information, but the Discharger did not contact staff in response to the phone call.
13. On 10 February 2017, Board staff sent the Discharger a notification letter (Pre-ACL letter) via certified mail, explaining that an Administrative Civil Liability (ACL) Complaint would be issued if he did not obtain regulatory coverage and initiate settlement discussions by 3 March 2017.

14. The Discharger's representative received the pre-ACL letter on 23 February 2017.
15. On 3 March 2017, the Discharger contacted Board staff in response to receiving the pre-ACL letter. A settlement meeting, via conference call, was scheduled for 5 April 2017. A settlement was not reached because the Discharger did not make himself available to Board staff after the meeting was scheduled.
16. On 16 June 2017, Board staff sent the Discharger an offer to settle his administrative civil liability (Compressed ACL) that included a proposed settlement penalty. The Compressed ACL presented the Discharger with the options of accepting the settlement offer, contesting the alleged violation, or rejecting the offer. Board staff did not receive a response to the Compressed ACL.
17. On 8 July 2017, the Discharger enrolled in the Sacramento Valley Water Quality Coalition (Coalition). As of the date on which an ACL Complaint was issued, the Discharger had not obtained regulatory coverage under the General Order because the Discharger failed to submit a completed NOI and \$200 administrative processing fee to the Central Valley Water Board.
18. On 27 November 2017, the Central Valley Water Board received the Discharger's completed NOI to obtain regulatory coverage under the General Order and received the \$200 administrative processing fee.

VIOLATION

19. On 18 September 2017, the Assistant Executive Officer of the Central Valley Water Board issued ACL Complaint R5-2017-0553 to the Discharger in the amount of thirty thousand seven hundred fifty-eight dollars (\$30,758) for his failure to submit a RoWD or failure to obtain regulatory coverage under the General Order or Individual General Order as required by Water Code section 13260. As of the date of the ACL Complaint, the applicable report or fee was 606 days past due.

REGULATORY CONSIDERATIONS

20. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (Water Code Division 7).
21. Water Code section 13260, subdivision (a), requires that any "person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system," shall file with the appropriate regional board a report of waste discharge containing such information and data as may be required by the regional board. The Central Valley Water Board

implements Water Code section 13260 in the area where the Discharger's lands are located.

22. Pursuant to Water Code section 13260, subdivision (d)(1)(A), each person required to submit a report under subdivision (a) shall submit a fee according to an established fee schedule.
23. Pursuant to Water Code section 13261, subdivision (a), "A person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
24. Water Code section 13261, subdivision (b)(1), states:

Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. Civil liability shall not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.
25. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
26. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing an administrative civil liability as outlined in Water Code section 13327.
27. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A to this Order. The proposed administrative civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
28. **Maximum and Minimum Penalties.** As described above, the statutory maximum under Water Code section 13261, subdivision (b)(1) is \$1,000 per day of violation. As of the date of the ACL Complaint, the Discharger was out of compliance for 606 days, thus

resulting in a maximum penalty of \$606,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to timely enroll under Order R5-2014-0030-R1 is \$13,957 (see Attachment A for how this was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$15,353).

29. Notwithstanding the issuance of this ACL Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
30. Issuance of this ACL Order is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).
31. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.
32. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegee is authorized to refer this matter to the Attorney General's Office for enforcement.
33. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED THAT:

1. Rene Larranaga shall be assessed an administrative civil liability in the amount of thirty thousand seven hundred fifty-eight dollars (\$30,758).
2. Payment shall be made no later than 30 days from the date on which this Order is issued by check payable to the *State Water Pollution Cleanup and Abatement Account*, and shall have the number of this ACL Order written upon it.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region.

Pamela C. Creedon
Executive Officer

Date

Attachment A: Penalty Calculation Methodology